

Senate Amendment 3054

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1 1 Amend Senate File 282 as follows:
1 2 #1. Page 6, by striking lines 21 through 26 and
1 3 inserting the following:
1 4 <(3) Reasonably relied upon a decision of a court,
1 5 ~~or a formal opinion of the Iowa public information~~
1 6 ~~board, the attorney general, or the attorney for the~~
1 7 ~~governmental body, given in writing, or as~~
1 8 ~~memorialized in the minutes of the meeting at which a~~
1 9 ~~formal oral opinion was given, or an advisory opinion~~
1 10 ~~of the Iowa public information board, the attorney~~
1 11 ~~general, or the attorney for the governmental body,~~
1 12 ~~given in writing.~~

1 13 Sec. ____ Section 21.6, subsection 3, paragraph d,
1 14 Code 2009, is amended to read as follows:

1 15 d. Shall issue an order removing a member of a
1 16 governmental body from office if that member has
1 17 engaged in a prior violation of this chapter for which
1 18 damages were assessed against the member during the
1 19 member's term. In making this determination, the
1 20 court shall recognize violations for which damages
1 21 were assessed by the Iowa public information board
1 22 created in section 23.3.>

1 23 #2. Page 10, line 9, by inserting after the word
1 24 <because> the following: <of a pending request by the
1 25 lawful custodian to the Iowa public information board
1 26 for an opinion regarding the status of the record
1 27 requested, or other>.

1 28 #3. Page 10, line 24, by inserting after the word
1 29 <file> the following: <a complaint with the Iowa
1 30 public information board pursuant to section 23.7 or
1 31 file>.

1 32 #4. Page 19, by striking lines 2 through 7 and
1 33 inserting the following:
1 34 <(3) Reasonably relied upon a decision of a court,
1 35 ~~or an a formal opinion of the Iowa public information~~
1 36 ~~board, the attorney general, or the attorney for the~~
1 37 ~~government body, given in writing, or as memorialized~~
1 38 ~~in the minutes of the meeting at which a formal oral~~
1 39 ~~opinion was given, or an advisory opinion of the Iowa~~
1 40 ~~public information board, the attorney general, or the~~
1 41 ~~attorney for the governmental body, given in writing.~~

1 42 Sec. ____ Section 22.10, subsection 3, paragraph
1 43 d, Code 2009, is amended to read as follows:

1 44 d. Shall issue an order removing a person from
1 45 office if that person has engaged in a prior violation
1 46 of this chapter for which damages were assessed
1 47 against the person during the person's term. In
1 48 making this determination, the court shall recognize
1 49 violations for which damages were assessed by the Iowa
1 50 public information board created in section 23.3.>

2 1 #5. By striking page 20, line 18, through page 23,
2 2 line 25, and inserting the following:

2 3 <Sec. ____ NEW SECTION. 23.1 CITATION AND
2 4 PURPOSE.

2 5 This chapter may be cited as the "Iowa Public
2 6 Information Board Act". The purpose of this chapter
2 7 is to provide an alternative means by which to secure
2 8 compliance with and enforcement of the requirements of
2 9 chapters 21 and 22 through the provision by the Iowa
2 10 public information board to all interested parties of
2 11 an efficient, informal, and cost-effective process for
2 12 resolving disputes.

2 13 Sec. ____ NEW SECTION. 23.2 DEFINITIONS.

2 14 1. "Board" means the Iowa public information board
2 15 created in section 23.3.

2 16 2. "Complainant" means a person who files a
2 17 complaint with the board.

2 18 3. "Complaint" means a written and signed document
2 19 filed with the board alleging a violation of chapter
2 20 21 or 22.

2 21 4. "Custodian" means a government body, government
2 22 official, or government employee designated as the
2 23 lawful custodian of a government record pursuant to
2 24 section 22.1.

2 25 5. "Government body" means the same as defined in
2 26 section 22.1.

2 27 6. "Person" means an individual, partnership,
2 28 association, corporation, legal representative,
2 29 trustee, receiver, custodian, government body, or
2 30 official, employee, agency, or political subdivision
2 31 of this state.

2 32 7. "Respondent" means any agency or other unit of
2 33 state or local government, custodian, government
2 34 official, or government employee who is the subject of
2 35 a complaint.

2 36 Sec. ____ NEW SECTION. 23.3 BOARD APPOINTED.

2 37 1. An Iowa public information board is created
2 38 consisting of five members appointed by the governor,
2 39 subject to confirmation by the senate. Membership
2 40 shall be balanced as to political affiliation as
2 41 provided in section 69.16 and gender as provided in
2 42 section 69.16A. Members appointed to the board shall
2 43 serve staggered, four-year terms, beginning and ending
2 44 as provided by section 69.19. A quorum shall consist
2 45 of three members.

2 46 2. A vacancy on the board shall be filled by the
2 47 governor by appointment for the unexpired part of the
2 48 term. A board member may be removed from office by
2 49 the governor for good cause. The board shall select
2 50 one of its members to serve as chair and shall employ
3 1 a director who shall serve as the executive officer of
3 2 the board.

3 3 Sec. ____ NEW SECTION. 23.4 COMPENSATION AND
3 4 EXPENSES.

3 5 Board members shall be paid a per diem as specified
3 6 in section 7E.6 and shall be reimbursed for actual and
3 7 necessary expenses incurred while on official board
3 8 business. Per diem and expenses shall be paid from
3 9 funds appropriated to the board.

3 10 Sec. ____ NEW SECTION. 23.5 ELECTION OF
3 11 REMEDIES.

3 12 1. An aggrieved person, any taxpayer or citizen
3 13 of this state, the attorney general, or any county
3 14 attorney may seek enforcement of the requirements of
3 15 chapters 21 and 22 by electing either to file an
3 16 action pursuant to section 17A.19, 21.6, or 22.10,
3 17 whichever is applicable, or in the alternative, to
3 18 file a timely complaint with the board.

3 19 2. If more than one person seeks enforcement of
3 20 chapter 21 or 22 with respect to the same incident
3 21 involving an alleged violation, and one or more of
3 22 such persons elects to do so by filing an action under
3 23 section 17A.19, 21.6, or 22.10 and one or more of such
3 24 persons elects to do so by filing a timely complaint
3 25 with the board, the court in which the action was
3 26 filed shall dismiss the action without prejudice,
3 27 authorizing the complainant to file a complaint with
3 28 respect to the same incident with the board without
3 29 regard to the timeliness of the filing of the
3 30 complaint at the time the action in court is
3 31 dismissed.

3 32 3. If a person files an action pursuant to section
3 33 22.8 seeking to enjoin the inspection of a public
3 34 record, the respondent or person requesting access to
3 35 the record which is the subject of the request for
3 36 injunction may remove the proceeding to the board for
3 37 its determination by filing, within thirty days of the
3 38 commencement of the judicial proceeding, a complaint
3 39 with the board alleging a violation of chapter 22 in
3 40 regard to the same matter.

3 41 Sec. ____ NEW SECTION. 23.6 BOARD POWERS AND
3 42 DUTIES.

3 43 The board shall have all of the following powers
3 44 and duties:

3 45 1. Employ such employees as are necessary to
3 46 execute its authority, including administrative law
3 47 judges, and attorneys to prosecute respondents in
3 48 proceedings before the board and to represent the
3 49 board in proceedings before a court. Notwithstanding
3 50 section 8A.412, all of the board's employees, except
4 1 for the executive director and attorneys, shall be
4 2 employed subject to the merit system provisions of
4 3 chapter 8A, subchapter IV.

4 4 2. Adopt rules with the force of law pursuant to
4 5 chapter 17A calculated to implement, enforce, and

4 6 interpret the requirements of chapters 21 and 22 and
4 7 to implement any authority delegated to the board by
4 8 this chapter.

4 9 3. Issue, consistent with the requirements of
4 10 section 17A.9, declaratory orders with the force of
4 11 law determining the applicability of chapter 21 or 22
4 12 to specified fact situations and issue informal advice
4 13 to any person concerning the applicability of chapters
4 14 21 and 22.

4 15 4. Receive complaints alleging violations of
4 16 chapter 21 or 22, seek resolution of such complaints
4 17 through informal assistance or through mediation and
4 18 settlement, formally investigate such complaints,
4 19 decide after such an investigation whether there is
4 20 probable cause to believe a violation of chapter 21 or
4 21 22 has occurred, and if probable cause has been found
4 22 prosecute the respondent before the board in a
4 23 contested case proceeding conducted according to the
4 24 provisions of chapter 17A.

4 25 5. Request and receive from a government body
4 26 assistance and information as necessary in the
4 27 performance of its duties. The board may examine a
4 28 record of a government body that is the subject matter
4 29 of a complaint, including any record that is
4 30 confidential by law. Confidential records provided to
4 31 the board by a governmental body shall continue to
4 32 maintain their confidential status. Any member or
4 33 employee of the board is subject to the same policies
4 34 and penalties regarding the confidentiality of the
4 35 document as an employee of the government body.

4 36 6. Issue subpoenas enforceable in court for the
4 37 purpose of investigating complaints and to facilitate
4 38 the prosecution and conduct of contested cases before
4 39 the board.

4 40 7. After appropriate board proceedings, issue
4 41 orders with the force of law, determining whether
4 42 there has been a violation of chapter 21 or 22,
4 43 requiring compliance with specified provisions of
4 44 those chapters, imposing civil penalties equivalent to
4 45 and to the same extent as those provided for in
4 46 section 21.6 or 22.10, as applicable, on a respondent
4 47 who has been found in violation of chapter 21 or 22,
4 48 and imposing any other appropriate remedies calculated
4 49 to declare, terminate, or remediate any violation of
4 50 those chapters.

5 1 8. Represent itself in judicial proceedings to
5 2 enforce or defend its orders and rules through
5 3 attorneys on its own staff, through the office of the
5 4 attorney general, or through other attorneys retained
5 5 by the board, at its option.

5 6 9. Make training opportunities available to lawful
5 7 custodians, government bodies, and other persons
5 8 subject to the requirements of chapters 21 and 22 and
5 9 require, in its discretion, appropriate persons who
5 10 have responsibilities in relation to chapters 21 and
5 11 22 to receive periodic training approved by the board.

5 12 10. Disseminate information calculated to inform
5 13 members of the public about the public's right to
5 14 access government information in this state including
5 15 procedures to facilitate this access and including
5 16 information relating to the obligations of government
5 17 bodies under chapter 21 and lawful custodians under
5 18 chapter 22 and other laws dealing with this subject.

5 19 11. Prepare and transmit to the governor and to
5 20 the general assembly, at least annually, reports
5 21 describing complaints received, board proceedings,
5 22 investigations, hearings conducted, decisions
5 23 rendered, and other work performed by the board.

5 24 12. Make recommendations to the general assembly
5 25 proposing legislation relating to public access to
5 26 government information deemed desirable by the board
5 27 in light of the policy of this state to provide as
5 28 much public access as possible to government
5 29 information as is consistent with the public interest
5 30 and the need to protect individuals against undue
5 31 invasions of personal privacy.

5 32 Sec. ____ NEW SECTION. 23.7 FILING OF COMPLAINTS
5 33 WITH THE BOARD.

5 34 1. The board shall adopt rules with the force of
5 35 law and pursuant to chapter 17A providing for the
5 36 timing, form, content, and means by which any

5 37 aggrieved person, any taxpayer to or citizen of this
5 38 state, the attorney general, or any county attorney
5 39 may file a complaint with the board alleging a
5 40 violation of chapter 21 or 22. The complaint must be
5 41 filed within sixty days from the time the alleged
5 42 violation occurred or the complainant could have
5 43 become aware of the violation with reasonable
5 44 diligence. All complaints filed with the board shall
5 45 be public records.

5 46 2. All board proceedings in response to the filing
5 47 of a complaint shall be conducted as expeditiously as
5 48 possible.

5 49 3. The board shall not charge a complainant any
5 50 fee in relation to the filing of a complaint, the
6 1 processing of a complaint, or any board proceeding or
6 2 judicial proceeding resulting from the filing of a
6 3 complaint.

6 4 Sec. ____ NEW SECTION. 23.8 INITIAL PROCESSING
6 5 OF COMPLAINT.

6 6 Upon receipt of a complaint alleging a violation of
6 7 chapter 21 or 22, the board shall do either of the
6 8 following:

6 9 1. Determine that, on its face, the complaint is
6 10 within the board's jurisdiction, appears legally
6 11 sufficient, and could have merit. In such a case the
6 12 board shall accept the complaint, and shall notify the
6 13 parties of that fact in writing.

6 14 2. Determine that, on its face, the complaint is
6 15 outside its jurisdiction, is legally insufficient, is
6 16 frivolous, is without merit, involves harmless error,
6 17 or relates to a specific incident that has previously
6 18 been finally disposed of on its merits by the board or
6 19 a court. In such a case the board shall decline to
6 20 accept the complaint. If the board refuses to accept
6 21 a complaint, the board shall provide the complainant
6 22 with a written order explaining its reasons for the
6 23 action.

6 24 Sec. ____ NEW SECTION. 23.9 INFORMAL ASSISTANCE
6 25 == MEDIATION AND SETTLEMENT.

6 26 1. After accepting a complaint, the board shall
6 27 promptly work with the parties through its employees
6 28 to reach an informal, expeditious resolution of the
6 29 complaint. If an informal resolution satisfactory to
6 30 the parties cannot be reached, the board or the
6 31 board's designee shall offer the parties an
6 32 opportunity to resolve the dispute through mediation
6 33 and settlement.

6 34 2. The mediation and settlement process shall
6 35 enable the complainant to attempt to resolve the
6 36 dispute with the aid of a neutral mediator employed
6 37 and selected by the board, in its discretion, from
6 38 either its own staff or an outside source.

6 39 3. Mediation shall be conducted as an informal,
6 40 nonadversarial process and in a manner calculated to
6 41 help the parties reach a mutually acceptable and
6 42 voluntary settlement agreement. The mediator shall
6 43 assist the parties in identifying issues and shall
6 44 foster joint problem solving and the exploration of
6 45 settlement alternatives.

6 46 Sec. ____ NEW SECTION. 23.10 ENFORCEMENT.

6 47 1. If any party declines mediation or settlement
6 48 or if mediation or settlement fails to resolve the
6 49 matter to the satisfaction of all parties, the board
6 50 shall initiate a formal investigation concerning the
7 1 facts and circumstances set forth in the complaint.
7 2 The board shall, after an appropriate investigation,
7 3 make a determination as to whether the complaint is
7 4 within the board's jurisdiction and whether there is
7 5 probable cause to believe that the facts and
7 6 circumstances alleged in the complaint constitute a
7 7 violation of chapter 21 or 22.

7 8 2. If the board finds the complaint is outside the
7 9 board's jurisdiction or there is no probable cause to
7 10 believe there has been a violation of chapter 21 or
7 11 22, the board shall issue a written order explaining
7 12 the reasons for the board's conclusions and dismissing
7 13 the complaint, and shall transmit a copy to the
7 14 complainant and to the party against whom the
7 15 complaint was filed.

7 16 3. a. If the board finds the complaint is within
7 17 the board's jurisdiction and there is probable cause

7 18 to believe there has been a violation of chapter 21 or
7 19 22, the board shall issue a written order to that
7 20 effect and shall commence a contested case proceeding
7 21 under chapter 17A against the respondent. An attorney
7 22 selected by the director of the board shall prosecute
7 23 the respondent in the contested case proceeding. At
7 24 the termination of the contested case proceeding the
7 25 board shall, by a majority vote of its members, render
7 26 a final decision as to the merits of the complaint.
7 27 If the board finds that the complaint has merit, the
7 28 board may issue any appropriate order to ensure
7 29 enforcement of chapter 21 or 22 including but not
7 30 limited to an order requiring specified action or
7 31 prohibiting specified action and any appropriate order
7 32 to remedy any failure of the respondent to observe any
7 33 provision of those chapters.

7 34 b. If the board determines, by a majority vote of
7 35 its members, that the respondent has violated chapter
7 36 21 or 22, the board may also do any or all of the
7 37 following:

7 38 (1) Require the respondent to pay damages as
7 39 provided for in section 21.6 or 22.10, whichever is
7 40 applicable, to the extent that provision would make
7 41 such damages payable if the complainant had sought to
7 42 enforce a violation in court instead of through the
7 43 board.

7 44 (2) Void any action taken in violation of chapter
7 45 21 if a court would be authorized to do so in similar
7 46 circumstances pursuant to section 21.6.

7 47 c. The board shall not have the authority to
7 48 remove a person from public office for a violation of
7 49 chapter 21 or 22. The board may file an action under
7 50 chapter 21 or 22 to remove a person from office for
8 1 violations that would subject a person to removal
8 2 under those chapters.

8 3 d. A final board order resulting from such
8 4 proceedings may be enforced by the board in court and
8 5 is subject to judicial review pursuant to section
8 6 17A.19.

8 7 Sec. ____ NEW SECTION. 23.11 DEFENSES IN A
8 8 CONTESTED CASE PROCEEDING.

8 9 A respondent may defend against a proceeding before
8 10 the board charging a violation of chapter 21 or 22 on
8 11 the ground that if such a violation occurred it was
8 12 only harmless error or that clear and convincing
8 13 evidence demonstrated that grounds existed to justify
8 14 a court to issue an injunction against disclosure
8 15 pursuant to section 22.8.

8 16 Sec. ____ NEW SECTION. 23.12 JURISDICTION.

8 17 The board shall not have jurisdiction over the
8 18 judicial or legislative branches of state government
8 19 or any entity, officer, or employee of those branches,
8 20 or over the governor or the office of the governor.>

8 21 #6. Page 34, by striking lines 31 and 32 and
8 22 inserting the following:

8 23 <Sec. ____ IOWA PUBLIC INFORMATION BOARD ==
8 24 TRANSITION PROVISIONS.

8 25 1. The initial members of the Iowa public
8 26 information board established pursuant to this Act
8 27 shall be appointed by September 1, 2009.

8 28 2. Notwithstanding any provision of this Act to
8 29 the contrary, the director of the board and employees
8 30 of the board shall not be hired prior to July 1, 2010.

8 31 3. Prior to July 1, 2010, the board shall submit a
8 32 report to the governor and the general assembly. The
8 33 report shall include a job description for the
8 34 executive director of the board, goals for board
8 35 operations, and performance measures to measure
8 36 achievement of the board's goals.

8 37 Sec. ____ APPROPRIATION == IOWA PUBLIC INFORMATION
8 38 BOARD. There is appropriated from the general fund of
8 39 the state to the department of management for the
8 40 fiscal year beginning July 1, 2009, and ending June
8 41 30, 2010, the following amount, or so much thereof as
8 42 is necessary, to be used for the following purpose:

8 43 For the initial expenses of the Iowa public
8 44 information board as established in this Act:

8 45 \$ 6,000

8 46 Sec. ____ EFFECTIVE DATE. Except for the sections
8 47 of this Act establishing transition provisions for the
8 48 Iowa public information board and making an

8 49 appropriation for the initial expenses of the Iowa
8 50 public information board, this Act takes effect July
9 1 1, 2010.>
9 2 #7. Title page, by striking lines 2 and 3 and
9 3 inserting the following: <the creation of the Iowa
9 4 public information board, and providing an effective
9 5 date and making an appropriation.>
9 6
9 7
9 8
9 9 DAVID JOHNSON
9 10 SF 282.701 83
9 11 rh/rj/22220